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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,913

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James M. Brugger

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PROSKAUER ROSE LLP
PATENT DEPARTMENT
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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 11/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,913

Applicant(s)

BRUGGER ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1- 15 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 8, 10-12, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 3 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/30/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of species A, claims 1-6, 8-12, 14 and 15 in the reply filed on September 5, 2006 is acknowledged.

Claims 7 and 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 5, 2006.

Priority

Acknowledgment is made of applicant's claim for priority as a divisional of copending Application No. 09/865,905, filed on May 24, 2001, issued as U.S. Patent No. 6,852,090, which is a continuation of copending Application No. 09/513,773, filed on February 25, 2000, issued as U.S. Patent No. 6,579,253.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on July 30, 2004 was filed after the mailing date of the Application on March 8, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

Figures 1-22 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37

CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 1 is objected to because of the following informalities: the phrase "said flow balancing machine" lacks proper antecedent basis. Further, the limitation "a support on attached to said blood treatment machine" appears to be a typographical error. Appropriate correction is required.

Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 9 is a duplicate of claim 3.

Claim 10 is objected to because of the following informalities: claim 10 appears to be a duplicate of claim 4. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-6, 8,10-12,14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Dennehey et al (U.S. Patent No. 5,462,416).

With respect to **Claim 1**: Dennehey teaches a blood treatment system, comprising: a blood treatment machine 10 with first and second opposing portions 228,26,respectively, spaced apart prior to engagement to form a gap therebetween; said machine 10 having at least one actuator 236 and at least one sensor PS1-PS4 disposed on at least said first opposing portion 238; a support 238 attached to said blood treatment machine 10; a cartridge panel 140 holding a fluid circuit 18, said fluid circuit 18 having at least one portion 22 A,B,C to be aligned with said at least one actuator 236 and at least another portion S1-S4 to be aligned with said at least one sensor PS1-PS4 prior to engagement therebetween; said support 236 being configured to permit said cartridge panel 140 to be rested thereupon when said cartridge panel 140 is inserted in said gap; said support 238 and said cartridge panel 140 being configured such that said fluid circuit 18, at least one portion 22A,B,C and said at least another portions S1-S4 are aligned respectively with said at least one actuator 236 and said at least one sensor PS1-PS4; said machine first and second opposing portions 228,26 being movable with respect to each other to close around said cartridge panel 140 thereby to cause said at least one actuator 236 to engage said at least one portion 22A, and said at least one sensor PS1-PS4 to engage said at least another portion S1-S4.

With respect to **Claim 2**: The at least one actuator 236 has a pump module 254 that includes multiple peristaltic pumps 292 (Col. 20, lines 41-45, 56-60, Col. 23, lines 3-7).

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With respect to **Claims 4,10**: First and second opposing portions 228,26 are movable in a single motion via gripping elements 256 and spring loaded pins 264 (Col. 21, lines 27-35); said fluid circuit at least one portion 22 A/B/C includes at least three tube portions (two tube portions 134,136 per portion 22A/B/C) configured to be engaged with peristaltic pumps 292. The said at least one actuator 236 includes at least three peristaltic pumps 292 (a pair of pumps 292 per actuator), whereby said tube portions 134,136 and said peristaltic pumps 292 are caused to be engaged upon contact of portions 22 with actuators 236 via pump races 296 by a movement of said first and second opposing portions. (Col. 23, lines 1-13)

With respect to **Claims 5,11**: Cartridge panel 140 includes cutouts in the form of cavities to expose said at least one portion 22A/B/C and said at least another portions S1-S4 to said at least one actuator and said at least one sensor, respectively. (Col. 6, lines 59-66)

With respect to **Claim 6,12**: Blood treatment machine 10 is configured to substantially equalize a quantity of fluid removed from a patient with a quantity of fluid added to a patient during a blood treatment by having separate removal and return circuits. (Col. 16, lines 65-67, Col. 17, lines 20-25)

With respect to **Claim 8**: Actuators 236 include multiple peristaltic pumps 292. (Col. 23, lines 3-7)

With respect to **Claim 14**: Dennehey teaches a method of performing blood treatment using a blood treatment device 10 having first and second portions 228,26, respectively, that are brought together around a fluid circuit holder 140, comprising the steps of: positioning a fluid

circuit holder 140 within a slot defined by said first and second portions' 228,26 positioning said fluid circuit holder 140 on a support 238 of said blood treatment device; said second step of positioning being effective to align components 22A/B/C and S1-S4 of said fluid circuit 18 with corresponding actuators 236 and sensors PS1-PS4 of said blood treatment machine 10; closing said slot by mutually moving said first and second portions 228,26 together via said gripping elements 256 and load pins 264; said step of closing being effective to engage said fluid circuit components with said corresponding actuators 236 and sensors PS1-PS10 of said blood treatment machine 10. (Col. Col. 21, lines 4-7, 17-26)

With respect to **Claim 15**: Dennehey teaches that the step of closing includes rotating a clamp handle 256 around side edges 132A/B of each said fluid circuit portion 22A/B/C connected between said first and second portions 228,26 which brings them together. (Col. 21, lines 27-35)

Allowable Subject Matter

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: A thorough search of the prior art of record did not disclose any reference, alone or in combination with other reference(s) that teaches or fairly suggests first and second portions connected by rails wherein a support includes at least a portion of the rails.

The closest prior art is the combined teaching of Dennehey and U.S. Patent No. 6,830,553 to Burbank et al does not teach that the first and second opposing portions 228,26 are connected by rails at bottom ends thereof, or that said support 238 includes at least a portion of said rails. Burbank teaches a hemofiltration device having first and second opposed portions 26,28 engageable with one another and connected by rails wherein a support includes at least a portion of said rails 31 ('553, Col. 5, lines 18-23). Burbank teaches that the rails help to support and position the cartridge prior to engagement with the chassis panel 26. Since the device of Burbank also forms a gap therebetween for accommodating a cartridge panel wherein the panel is removably fixed to said first portion, and the cartridge panel 140 taught by Dennehey is also supported and positioned prior to movement of the first portion, panel 228 and the second portion, tray 26, toward each other as taught by Dennehey, it would be obvious to one of ordinary skill in the art to include rails that connect portions 228 and 26 taught by Dennehey, as such rails taught by Burbank constitute an alternate structural means for accomplishing the identical result of supporting and positioning a cartridge panel prior to use. However the prior art of Burbank et al is not available as prior art under 35 U.S.C. 103(c) as common ownership of the prior art of Burbank and the claimed invention existed at the time the claimed invention was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER
